



OFFICE OF THE INSPECTOR GENERAL
COMMONWEALTH OF MASSACHUSETTS

JEFFREY S. SHAPIRO
INSPECTOR GENERAL

**Internal Special Audit Unit:
2022 Annual Report**

MARCH 15, 2023

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March 15, 2023

Via Electronic Mail

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**Re: Office of the Inspector General, Internal Special Audit Unit:
2022 Annual Report**

Dear Secretary Fiandaca, Administrator Gulliver and Interim General Manager Gonnevill:

Pursuant to Section 9(e) of Chapter 6C of the Massachusetts General Laws, enclosed is the 2022 Annual Report of the Inspector General's Internal Special Audit Unit (ISAU), issued today.

This report, entitled *Office of the Inspector General, Internal Special Audit Unit: 2022 Annual Report*, is the 10th annual report issued by the ISAU since its inception in 2013.

With its broad statutory authority, the ISAU performs impactful reviews and analyses of public and private transportation funds. This work is designed to provide a level of oversight and focused, continual improvement recommendations for the Secretary of Transportation; MassDOT leadership, including the Highway Administrator; the General Manager of the MBTA; legislative leaders; other interested stakeholders; and the public at large.

I am proud of this report and the Office of Inspector General's ISAU team, which completed these reviews and developed the report. This team is led by Emily Pedersen and includes David Castelluccio, Jesmeen Khan, Colin Long, Ellen Lynch and Nicholas O'Neill.

Secretary Fiandaca, et al.

March 15, 2023

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Please do not hesitate to contact me if you have any questions about this report, the ISAU or this Office. I hope that you, too, find this report to provide meaningful and important insight.

Sincerely,



Jeffrey S. Shapiro
Inspector General

Enclosure

cc (via email):

The Hon. Brendan P. Crighton, Chair, Joint Committee on Transportation
The Hon. William M. Straus, Chair, Joint Committee on Transportation
The Hon. Michael J. Rodrigues, Chair, Senate Committee on Ways and Means
The Hon. Aaron M. Michlewitz, Chair, House Committee on Ways and Means
The Hon. Marc R. Pacheco, Chair, Senate Post Audit and Oversight
The Hon. John J. Mahoney, Chair, House Post Audit and Oversight
The Hon. Bruce E. Tarr, Senate Minority Leader
The Hon. Bradley H. Jones, Jr., House Minority Leader
Monica G. Tibbits-Nutt, Undersecretary, Massachusetts Department of Transportation
Gregory T. Rooney, Acting Chief of Staff, Massachusetts Department of Transportation
Colleen Ogilvie, Registrar, Registry of Motor Vehicles
Jeffrey DeCarlo, Administrator, MassDOT Aeronautics Division
Meredith Slesinger, Administrator, MassDOT Rail and Transit Division
Jonathan Lenicheck, Chief of Staff, Massachusetts Bay Transportation Authority
Laura L. Schaub, Cataloger, State Library of Massachusetts
Michael D. Hurley, Senate Clerk
Steven T. James, House Clerk

INSPECTOR GENERAL COUNCIL

Christopher Walsh, Chair (Governor's appointee; term expires June 29, 2023)

Susan Terrey, Vice Chair (Secretary of Public Safety and Security's designee: statutory appointment)

Attorney General Andrea Campbell (statutory appointment)

Auditor Diana DiZoglio (statutory appointment)

Comptroller William McNamara (statutory appointment)

Michael Caira (Governor's appointee; term expires June 29, 2023)

Rachel Ciocci (Auditor's appointee; term expires December 24, 2024)

James Morris (Attorney General's appointee; term expires September 30, 2024)

OFFICE OF THE INSPECTOR GENERAL'S LEADERSHIP

Jeffrey S. Shapiro, Inspector General

Natalie S. Monroe, First Assistant Inspector General

INTERNAL SPECIAL AUDIT UNIT

Emily Pedersen, Director (appointed by the Inspector General, term expires March 3, 2025)

David Castelluccio, Lead Investigator

Jesmeen Khan, Investigator

Colin Long, Coordinator/Investigator

Ellen Lynch, Investigator

Nicholas O'Neill, Associate Counsel

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EXECUTIVE SUMMARY

The Legislature created the Internal Special Audit Unit (ISAU) in 2009 as part of the Office of the Inspector General for the Commonwealth of Massachusetts (Office), an independent state agency with a broad legislative mandate to prevent and detect fraud, waste and abuse in the expenditure of public funds.

The ISAU's specific task is to monitor the quality, efficiency and integrity of the Massachusetts Department of Transportation (MassDOT) and the Massachusetts Bay Transportation Authority (MBTA). Consistent with that directive, the ISAU audits, investigates and reviews how public and private transportation funds are spent. In addition, Section 196 of Chapter 46 of the Acts of 2015 requires the ISAU to evaluate the MBTA's efforts to save public funds by privatizing some of its services.

Through all of its work, the ISAU assists not only MassDOT and the MBTA, but also serves the best interests of the Commonwealth, cities and towns, and the public at large.

In calendar year 2022, the ISAU's reviews led to MassDOT and the MBTA recovering \$488,934 from two vendors, with MassDOT pursuing an additional \$750,000 from a third vendor. This report summarizes those recoveries and the ISAU's other principal activities completed during the year.

MBTA Privatization. Between 2015 and 2018, the MBTA outsourced seven services pursuant to a temporary exemption from the Taxpayer Protection Act (TPA).¹ By statute, the Office must review all MBTA contracts for privatized services and file a report within 90 days after the performance of the contract is completed.²

In 2022, the ISAU issued reports on its reviews of two contracts for services the MBTA privatized: absence management services and police dispatch services. In general, the reviews found that the MBTA is a poor steward of public dollars and has weak approaches to procurements, contract development and contract administration. The ISAU made several recommendations, including that the MBTA should consider creating standalone contracts clearly spelling out terms such as costs and performance metrics. Additionally, the MBTA would benefit from improving its contract administration protocols. At a minimum, it should create contract administration plans that specify the individuals responsible for tracking contract deliverables, performance and costs. Further, the individuals who approve invoices must be familiar with the contract, especially the payment terms, and must validate all charges using documentation and other data. Further, the MBTA must improve its business continuity and records retention efforts.

¹ M.G.L. c. 7, §§ 52-55. The TPA, also known as the "Pacheco Law," establishes a process that state agencies and certain authorities, such as the MBTA, must follow before outsourcing certain services.

² Section 196(c) of Chapter 46 of the Acts of 2015.

The ISAU continues to actively monitor the status and completion dates of the remaining five privatization contracts to meet the Office's reporting requirements.

Federal Pandemic Funding. In December 2021, the Legislature created an oversight reserve fund for four state oversight agencies, including this Office, to review state and local agencies' use of federal pandemic funds. In addition to the Office creating a centralized Pandemic Funding Oversight Unit to coordinate statewide reviews, each division within the Office has the responsibility to include pandemic funds oversight within its regular work. The MBTA anticipates receiving approximately \$2.19 billion in federal assistance in response to the COVID-19 pandemic. In 2022, the ISAU continued to review the MBTA's use of those funds in accordance with the purposes described in the legislation creating the oversight reserve fund. The ISAU found that the MBTA appropriately used grant funds to cover labor costs.

MassDOT Leases. MassDOT owns property throughout the Commonwealth and generates revenue by leasing some properties to private companies. Over the last several years, the ISAU has reviewed certain leases to evaluate whether MassDOT had collected all rents and other payments due under the terms of the leases.

During its review, the ISAU identified a rail company, Pan Am Railways, that had leased a rail yard in western Massachusetts but had not paid rent to MassDOT for four years and therefore owed MassDOT approximately \$266,000. Following the ISAU's inquiry, MassDOT recovered the full amount the company owed.

The ISAU also found that McDonald's Corporation (McDonald's) appeared to have outstanding balances on four leases it had with MassDOT, including leases to operate service plazas on MassDOT property. In 2022, MassDOT retained an outside auditor, which confirmed that McDonald's had not paid all rent it owed to MassDOT. The auditor also calculated the late fees and penalties that MassDOT could recover under the lease agreement. These four leases had very detailed and specific calculations for late rent payments, indicating a very deliberate process to ensure rent was paid on time without further notice or incident.

In December 2022, the ISAU wrote a letter to MassDOT recommending that the department exercise its rights under its leases with McDonald's. Specifically, the ISAU recommended that MassDOT recover over \$750,000 in unpaid rents and fees, as well as the costs of performing the outside audit. MassDOT's recovery is pending as of the time this report was published.

MassDOT-certified DBE. Following a hotline tip, the ISAU reviewed whether a steel supplier, Atlantic Bridge & Engineering, qualified for the state's Disadvantaged Business Enterprise program (the DBE program) that gives businesses owned and controlled by socially and economically disadvantaged individuals a fair opportunity to compete for transportation contracts. The ISAU found that the company's prior successes as a construction subcontractor and supplier allowed its owner to "accumulate substantial wealth," meaning that the company no longer qualified to participate in the DBE program. Informing the ISAU's conclusion was its in-depth analysis of the business owner's overall financial condition, which

revealed their ownership of other businesses, a vast real estate portfolio, access to credit, and lavish spending on both personal and business accounts.

The ISAU reported its findings to MassDOT for possible corrective action. MassDOT conducted an independent review, agreed with the ISAU's findings and moved to rescind the company's DBE certification. Following a hearing, MassDOT's Unified Certification Program Board concluded that the company no longer met the DBE eligibility standards and agreed with the ISAU's findings and MassDOT's recommendation to decertify the company.

Anti-Fraud Training. In addition to the investigations, audits and reviews outlined above, in 2022 ISAU staff conducted training for highway field staff who oversee maintenance and construction projects. The training addressed common fraud schemes, prevention techniques and red flags for vendor fraud.

Hotlines. The ISAU continues to operate two confidential hotlines, one for the public and a second for MassDOT and MBTA employees. In 2022, the ISAU received and reviewed 303 complaints about suspected fraud, waste or abuse in the expenditure of transportation funds, a 17.89% increase over 2021.

BACKGROUND

I. Office of the Inspector General

The Office of the Inspector General for the Commonwealth of Massachusetts (Office) is an independent state agency charged with preventing and detecting fraud, waste and abuse in the use of public funds and public property. The Legislature created the Office in 1980 at the recommendation of the Special Commission on State and County Buildings, a legislative commission that spent two years probing corruption in the construction of public buildings in Massachusetts. It was the first state-level inspector general's office in the country.

In keeping with its broad statutory mandate, among other responsibilities, the Office also reviews programs and practices in state and local agencies to identify system-wide vulnerabilities and opportunities for improvement; investigates allegations of fraud, waste and abuse at all levels of government; and assists the public and private sectors to help prevent fraud, waste and abuse in government spending. In addition, the Office provides guidance to public employees on issues that arise under the Uniform Procurement Act, M.G.L. c. 30B, which governs the purchase and disposition of supplies, services, equipment and real property by municipalities and other public entities. The Office also educates public and private employees through its Massachusetts Certified Public Purchasing Official (MCPPO) training program.

II. Internal Special Audit Unit

The Legislature created the Internal Special Audit Unit (ISAU) in 2009 to monitor the quality, efficiency and integrity of the Massachusetts Department of Transportation's (MassDOT or Department) operating and capital programs. The ISAU's oversight responsibilities also encompass the Massachusetts Bay Transportation Authority (MBTA).

The ISAU investigates claims of waste or misuse of transportation funds and works to identify potential cost savings. The Inspector General is statutorily required to appoint a director of the ISAU for a fixed term of six years. Emily Pedersen, who was named to the position in 2019, heads up a team comprised of David Castelluccio, Jesmeen Khan, Colin Long, Ellen Lynch and Nicholas O'Neill. The ISAU's staff of six, with a Fiscal Year 2023 budget of \$577,604, oversees roughly \$6 billion in spending by MassDOT and the MBTA, which together have approximately 9,500 employees.

The ISAU's activities include, but are not limited to:

1. Reviewing MassDOT's operations and programs to ascertain whether they are efficient, cost-effective and successful in achieving established results. This includes reviewing the operating procedures of the MBTA and regional transit authorities.
2. Working with MassDOT and the MBTA to strengthen internal controls, contract administration and procurement practices.

3. Evaluating the MBTA's outsourcing of services under Section 196 of Chapter 46 of the Acts of 2015. This includes examining the quality of the services provided, the expected and actual cost of the contract, the competitiveness and fairness of the procurement, and how the contract's cost compares to derived benefits.
4. Investigating allegations of fraud, waste and abuse in the expenditure of public and private transportation funds. This includes handling complaints from members of the public, as well as from MassDOT and MBTA employees, regarding suspected wrongdoing.
5. Determining whether MassDOT and the MBTA are complying with applicable policies, procedures, laws and regulations.
6. Auditing, investigating and reviewing specific operations at the request of the Legislature or the boards and management of MassDOT and the MBTA, as appropriate.
7. Reviewing city and town capital improvement projects, such as highway construction and roadway enhancements, that are funded through programs administered by MassDOT.
8. Supporting the Registry of Motor Vehicles' Disability Placard Abuse Task Force and its placard abuse hotline.

III. Massachusetts Department of Transportation

MassDOT manages the Commonwealth's roadways, public transit systems, and transportation licensing and registration. It consists of the following divisions: the Highway Division, the Registry of Motor Vehicles (RMV), the Aeronautics Division, the Rail and Transit Division, and the MBTA.

The Highway Division is responsible for maintaining the state's roadways, bridges and tunnels. It also administers several transportation programs that benefit cities and towns, including Chapter 90 funding and "Complete Streets" grants.³ The RMV's duties include, but are not limited to, the administration of driver's licenses, motor vehicle registrations and vehicle inspections across the state. The Aeronautics Division coordinates aviation policy and oversees the safety, security and infrastructure of 35 public airports across Massachusetts. The Rail and Transit Division oversees all transit, freight and intercity rail initiatives, as well as the state's 15 regional transit authorities. As discussed in the next section, the MBTA operates the Commonwealth's public transit system.

MassDOT is governed by an 11-member board appointed by the governor and chaired by the secretary of transportation. While one board member must be a transit rider, the remaining members must have experience in public or private finance, transportation planning and policy, municipal

³ While commonly referred to as "Chapter 90," the statutory authority for the program is now codified as Section 4 of Chapter 6C of the Massachusetts General Laws. The program provides funding to municipalities for transportation infrastructure projects on municipal ways, including roads and bridges. These projects create or extend the life of capital facilities and roadways.

government, civil engineering and labor organizations. No more than six board members, excluding the chair, may be members of the same political party.

IV. Massachusetts Bay Transportation Authority

The MBTA was created by the Legislature in 1964 to operate the Commonwealth's public transit system, which provides subway, trolley, bus, commuter rail, ferry and paratransit services throughout eastern Massachusetts and parts of Rhode Island.⁴ The MBTA is the nation's fifth largest transit agency based on ridership, with an annual budget of \$2.55 billion for Fiscal Year 2023.

The MBTA currently serves 176 cities and towns in the greater Boston metropolitan area. With a workforce of roughly 5,600 employees, the MBTA operates 24 hours a day, 7 days a week. The majority of the agency's employees are members of one of 29 unions and work pursuant to one of 17 collective bargaining agreements.

Almost 90% of MBTA employees are engaged in operations, construction or maintenance functions, while the remaining 10% perform police, security, safety or administrative tasks. Operations employees are those who work, in some capacity, to transport riders throughout the MBTA's network via light rail, heavy rail, commuter rail, bus, paratransit and ferry services.⁵

In July 2021, former Governor Charlie Baker signed legislation establishing a permanent MBTA Board of Directors (MBTA Board) to replace the Fiscal and Management Control Board, which had governed the agency since 2015. Composed of seven members with three subcommittees, the MBTA Board convened for the first time on October 27, 2021 and meets monthly to oversee the MBTA's affairs. Its chief duties include approving budgets, addressing ridership and revenue challenges, authorizing certain large contracts, and bargaining with labor organizations.

⁴ M.G.L. c. 161A.

⁵ Light rail includes the MBTA's Green Line trains. Heavy rail is commonly referred to as a subway line, and includes the Orange, Red and Blue lines.

AUDITS, INVESTIGATIONS AND REVIEWS

As previously described, the ISAU conducts a wide range of investigations, reviews and audits related to the use of public and private transportation funds. Some of the ISAU's work results in public reports and letters, while some activities include collaborative efforts to help MassDOT and the MBTA improve their policies, procedures and internal controls. Other ISAU investigations result in settlements with companies that do business with MassDOT or the MBTA.

Some of the ISAU's work in 2022, such as an additional review of highway bridge maintenance contracts and various preliminary investigations, did not result in a formal published work product. Moreover, after a preliminary evaluation or investigation, the ISAU may direct certain matters to MassDOT or the MBTA for action. The ISAU also refers cases to other Office divisions and oversight authorities for potential administrative, civil or criminal proceedings. This section of the report summarizes the ISAU's principal investigations, reviews and audits over the last year.

I. Massachusetts Bay Transportation Authority

A. Privatization of Services

In 1993, the Massachusetts Legislature passed the Taxpayer Protection Act (TPA), which establishes a process that state agencies and applicable authorities, like the MBTA, must follow before hiring a private company to perform services that are (1) valued at \$500,000 or more; and are (2) "substantially similar to and in lieu of" services that the agency's employees already provide.⁶ Hiring a company to discharge services previously administered by public employees is commonly referred to as "privatization."

In 2015, the Legislature temporarily exempted the MBTA from the TPA's requirements for a three-year period. See Section 196 of Chapter 46 of the Acts of 2015 (Chapter 46). Between 2015 and 2018, the MBTA privatized seven services consistent with its more flexible ability to outsource under the legislation.⁷ [Appendix 1](#) outlines those contracts and the services each vendor provided or is providing.

Chapter 46 further instructs the Office to review all MBTA contracts executed under the privatization waiver and issue a report within 90 days after the complete performance of such a contract. Specifically, the Office must review:

1. The competitiveness and fairness of the procurement process resulting in the contract;
2. The quality of the services provided;

⁶ M.G.L. c. 7, § 53.

⁷ Although the MBTA outsourced seven services under the exemption, the MBTA entered into a total of eight contracts. The vendor and the MBTA terminated the first contract for a customer service call center and the MBTA conducted a new procurement for a new vendor.

3. The expected and actual cost of the contract; and
4. Whether the contract's cost exceeded its benefits.

Three MBTA privatization contracts concluded in calendar year 2022, triggering the Office's reporting responsibility. The ISAU's findings regarding two of those contracts are presented herein, with the third still under review as of this publication's release date.

The ISAU determined that the MBTA's contract oversight generally suffers from several shortcomings: poor stewardship of public dollars; a lack of an organizational approach to procurement, contract development and contract administration; poor or non-existent transition of information and documentation when employees leave the agency, *i.e.*, knowledge transfer or business continuity efforts; and poor recordkeeping that is contrary to best practices and the Commonwealth's record retention laws.

1. Workpartners

For example, the ISAU issued a report on October 17, 2022, detailing its findings from its review of the MBTA's absence management contract with the University of Pittsburgh Medical Center Benefit Management Services, Inc. (d/b/a Workpartners). (A full version of the report is available [here](#).) Under the contract, Workpartners was tasked with managing employees' leave balances; responding to calls from employees who needed to take sick or other unplanned leave; and approving or denying employees' Family Medical Leave Act (FMLA) applications.

While Workpartners was successful in helping to improve some aspects of employee absences – such as answering employee phone calls in a timely manner and reducing the number of canceled bus trips– the ISAU found problems in other areas.

Specifically, the Workpartners contract had two tiers of billing: one set of rates for current employees and a lower rate for former employees. The ISAU found that Workpartners charged the incorrect rate for former employees for most of the contract period. Between October 2016 and February 2021, Workpartners charged the MBTA the higher, current-employee rates for former employees. If the MBTA had compared the contractual rates to the submitted invoices, it would have quickly identified the overbilling. Since the MBTA did not identify the overbilling, however, this resulted in a \$222,934.40 overpayment to Workpartners, which is equivalent to 9% of the contract cost.

Further, the contract between the MBTA and Workpartners did not include performance metrics to evaluate the quality of Workpartners' services or the overall success of the contract. Performance metrics hold a company accountable for the services set forth in the contract and help ensure that the MBTA receives high quality services. Metrics would have allowed the MBTA to measure Workpartners' level of service and evaluate how well the company performed before it entered into a new contract with the company.

2. IXP Corporation

The ISAU released a second report on December 23, 2022, based on its examination of the MBTA's police dispatch contract with IXP Corporation (IXP). (A full version of the report is available [here](#).) Under that agreement, IXP staffed the Transit Police Department's (TPD) dispatch center, which answers emergency and non-emergency calls and dispatches police officers to respond to incidents throughout the MBTA system. The ISAU also found that the MBTA needs to improve its stewardship of public dollars, organizational approach to contracting and recordkeeping.

As an example of stewardship, the actual cost to the MBTA exceeded the contract's expected cost by \$688,592, or 14.27% over the agreement's "not-to-exceed" provisions. This resulted from the fact that the MBTA agreed to rate increases for the last two years of the contract, despite the fact that IXP was not meeting all of its obligations under the contract.

By contrast, shortly after IXP assumed its role in the dispatch center, the MBTA agreed to reduce the minimum staffing requirement for the overnight shift from three employees to two. IXP accordingly reduced its services, but the MBTA did not adjust IXP's monthly rate to reflect that reduction. At a minimum, the MBTA should have documented its rationale for agreeing to this change and should have negotiated a rate reduction in the contract price.

The ISAU further found that IXP did not fulfill several of its contractual obligations – such as those relating to general management and operations – and further did not meet some of the call-dispatch performance metrics specified in the contract. Yet, the ISAU found no record that the TPD or the MBTA took steps to enforce performance of those obligations.

Finally, the IXP contract again demonstrated the MBTA's poor record retention practices. Even though the MBTA reported that it outsourced dispatch services with the dual goals of saving money and putting officers back on patrol, the MBTA and TPD could not produce records of the in-house costs to operate the dispatch center. Similarly, while TPD reported that a number of police officers returned to patrol duties once IXP took over the dispatch role, TPD could not provide records of which officers worked in the dispatch center before IXP was hired.

Through its Workpartners and IXP reviews, the ISAU has identified ways in which the MBTA could strengthen its procurement practices, contract administration and oversight across all contracts. Rather than using a compilation of bidding documents that contain both inconsistent terms and extraneous information, the MBTA should consider creating standalone contracts that clearly spell out the parties' entire agreement, including the costs, deliverables, performance metrics, reporting requirements, the approval process for paying invoices and reimbursements, and the consequences for noncompliance with the contract's terms and conditions.

Additionally, the MBTA should develop contract administration plans that, at a minimum, identify the individuals at the MBTA who are responsible for ensuring that the chosen vendor fulfills its contractual obligations. For instance, the contract administration plan should identify the individual staff members who are responsible for tracking deliverables and performance metrics, verifying backup

documentation before paying invoices or other expenses, maintaining records and holding the vendor accountable for any noncompliance. Finally, the MBTA should develop record retention policies and procedures and train employees on effective records management.

B. Federal Pandemic Funding

The MBTA has received, or anticipates receiving, approximately \$2.19 billion in federal assistance in response to the COVID-19 pandemic. In December 2021, the Legislature created an oversight reserve fund for four state oversight agencies, including this Office, to review state and local agencies' use of that funding. Throughout 2022, in accordance with its statutory mandate to monitor the quality and efficiency of MassDOT and MBTA programs, the ISAU reviewed the MBTA's use of federal pandemic dollars.

The MBTA reported that it used most of the pandemic funds for operating expenses expressly related to employee payroll and benefits; the MBTA refers to these collectively as "labor charges." Second, the Federal Transit Administration (FTA) allowed the MBTA to use part of the federal dollars for eligible non-payroll operating expenses during the COVID-19 pandemic. During 2022, the ISAU reviewed the MBTA's use of funding for labor charges and began to review funding for non-payroll operating expenses.⁸

1. Operating Expenses for Labor Charges

During the last year, the ISAU focused its review on the MBTA's use of federal pandemic dollars for operating expenses, including for employee payroll and benefits. That figure is expected to approach at least \$1.84 billion in labor charges alone.

In examining whether the MBTA appropriately applied pandemic funding to labor charges, the ISAU reviewed the underlying pandemic relief legislation and grant documents and conducted legal research to determine the permissible expenditures under the various federal acts. The ISAU also analyzed MBTA data related to payroll and monthly operating expenses. MBTA employees walked the ISAU through the agency's monthly payroll process and how it draws down grant funds from the FTA for operating expenses every month.^{9,10}

The ISAU also reviewed nine months of labor charges (totaling approximately \$619.4 million) for which the MBTA initiated drawdowns from the FTA. This sample size represents 31.92% of all federal pandemic funds the agency has received, or anticipates receiving, for labor charges. The ISAU reviewed disbursement transactions, including backup payroll and labor data that related to the monthly amounts

⁸ The Federal Emergency Management Agency (FEMA) also reimbursed the MBTA a portion of funds spent for emergency protective measures, such as personal protective equipment, cleaning supplies and COVID-19 testing kits. The MBTA also anticipates receiving up to \$103 million in federal pandemic funds for the Green Line Extension project. The ISAU did not review these two types of funding in 2022.

⁹ The MBTA reported that FTA recipients followed normal procedures established prior to the pandemic for drawing down grant monies. The FTA simply increased its allocation of funds, while drawdown procedures remained the same.

¹⁰ A "drawdown" refers to the funding that a recipient receives as part of a grant that the FTA allocated. The "drawdown process" refers to the steps to request those grant funds from the FTA.

requested. As part of its analysis, the ISAU verified that each of the nine drawdowns reviewed reflected the actual payroll data for that month.

The ISAU concluded that the MBTA appropriately requested grant funds from the FTA for labor charges. The ISAU did not find extraneous charges within the data for expenses that were not labor-related. However, the ISAU limited its work to a review of procedure and did not analyze or investigate whether all labor hours were actually worked.

2. Non-Payroll Expenses

The ISAU also continued to review the MBTA's use of federal pandemic funding for certain non-payroll expenses by analyzing a list of vendors and payments that the agency made from FTA pandemic funding.

Throughout 2022, the ISAU reviewed these expenses and determined that the named vendors did perform operational services for the MBTA. The ISAU further found that the MBTA conducted business with these vendors and that the payments were reasonable. For example, one vendor paid with federal monies operated ferry services for the MBTA.

The ISAU will continue its review of the use of pandemic funds for non-payroll expenses in 2023.

II. Massachusetts Department of Transportation

A. Office of Real Estate and Economic Development – Leases

MassDOT generates revenue by leasing some of its properties to private companies. Among other responsibilities, MassDOT's Office of Real Estate and Economic Development (OREED) develops and manages MassDOT's portfolio of leases and license agreements.

In 2022, the ISAU worked collaboratively with the Office's Civil Recovery Unit (CRU) in continuing to review existing leases between MassDOT and various companies. The goal was to ensure that MassDOT's leaseholders pay all rent owed and that the Department appropriately handles its real estate leases. Throughout this review, OREED continued to improve its lease management practices and vendor oversight.

During its review, the ISAU identified a rail company, Pan Am Railways, that for four years failed to pay rent due under its contract to use a MassDOT-owned rail yard in western Massachusetts.¹¹ Pan Am Railways therefore owed MassDOT approximately \$266,000. Following the ISAU's inquiry, MassDOT recovered the full amount the company owed.

In 2022, the ISAU also continued reviewing MassDOT's four leases with McDonald's Corporation (McDonald's), which operates service plazas throughout the Commonwealth. After discovering potential

¹¹ This agreement was originally with Boston and Maine Railroad. Pan Am Railways subsequently acquired Boston and Maine Railroad.

underpayments, the ISAU notified MassDOT, which hired an outside auditor.¹² The auditor completed its review in 2022 and identified underpayments, late fees and penalties.

In December 2022, the ISAU and CRU wrote a letter to MassDOT recommending that the agency enforce its rights under the four leases and recover the unpaid amounts plus disincentive fees, equal to 125% of the unpaid amount. Specifically, the ISAU recommended that MassDOT move to recover over \$750,000 in unpaid rent, fees and the costs of performing the audit.

MassDOT's recovery is pending as of the time this report was published.

B. Highway Division – Disadvantaged Business Enterprise

The U.S. Department of Transportation (USDOT) created the Disadvantaged Business Enterprise (DBE) program to increase the number of minority- and women-owned businesses that work on federally funded transportation projects. USDOT describes the purpose of the program as follows:

The [DBE] program is designed to remedy ongoing discrimination and the continuing effects of past discrimination in federally assisted highway, transit, airport, and highway safety financial assistance transportation contracting markets nationwide. The primary remedial goal and objective of the DBE program is to level the playing field by providing small businesses owned and controlled by socially and economically disadvantaged individuals a fair opportunity to compete for federally funded transportation contracts.¹³

As part of the DBE program, state transportation agencies such as MassDOT must establish "participation goals" for the number or percentage of contracts awarded to DBEs. Because most transportation projects involve numerous subcontractors and suppliers, transportation agencies must also set minimum goals for the amount or percentage of subcontracts awarded to DBEs. In Fiscal Year 2022, for example, MassDOT set its proposed goals at 5.5% for transit projects and at 13.6% for highway projects. Furthermore, the prime contractor on each project must demonstrate a good-faith effort to award DBEs the required amount or percentage of work.¹⁴

In addition to creating these goals, MassDOT must verify that companies qualify as a DBE. Accordingly, MassDOT established a Unified Certification Program (UCP) to verify the eligibility of companies seeking DBE certifications.

¹² All four leases include a provision allowing MassDOT to initiate an audit of McDonald's revenues from the properties for the purposes of determining rent due.

¹³ Disadvantaged Business Enterprise Program, U.S. Department of Transportation website, *available at* <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise> (last viewed March 6, 2023).

¹⁴ Prime contractors work directly with the government. They hire and manage any subcontractors and are responsible for ensuring that the work is completed as defined in the contract.

The ISAU investigated a complaint that a company, Atlantic Bridge & Engineering, was awarded subcontracts and supplied materials as a DBE even though the owner did not qualify as economically disadvantaged. Atlantic Bridge & Engineering worked on MassDOT projects as a subcontractor and supplier for decades. Between 2001 and 2020, the company received \$229 million on 228 MassDOT projects as either a DBE or a Woman’s Business Enterprise (WBE).¹⁵ The UCP last certified the business as a DBE in March 2016.

The ISAU concluded that, at the time of the investigation, Atlantic Bridge & Engineering’s owner was not an economically disadvantaged individual under federal DBE regulations, which specify that a DBE owner’s presumption of economic disadvantage can be rebutted if they demonstrate the ability “to accumulate substantial wealth.”¹⁶ The ISAU based its conclusion on an in-depth analysis of the company owner’s overall economic condition, including her ownership of other businesses, vast real estate portfolio, access to credit, and lavish spending on both personal and business accounts.

Following its review, the ISAU reported the matter to MassDOT to evaluate the Atlantic Bridge & Engineering’s DBE certification. The Adjudicatory Board of MassDOT’s Unified Certification Program (UCP Board) initiated proceedings based on its determination that the company was not economically disadvantaged. The UCP Board decision aligned with the ISAU’s findings and MassDOT’s recommendation to decertify Atlantic Bridge & Engineering. After a hearing, held on various dates from September 30, 2021 through January 21, 2022, the UCP Board concluded in a written decision on May 2, 2022, that the company no longer met federal DBE eligibility standards.

The OIG commends MassDOT’s action to pursue decertification. The Atlantic Bridge & Engineering’s owner was able to accumulate substantial wealth as a result of the company’s successes while working as a MassDOT subcontractor and supplier over several decades. No longer “economically disadvantaged,” she was thus ineligible for continued DBE certification.

III. Other Reviews and Referrals

As discussed in more detail below, the ISAU operates several hotlines that allow individuals to report potential fraud, waste, abuse or mismanagement of public and private transportation funds and programs. Although not every complaint results in an investigation, the ISAU conducts a preliminary review of each one. If the ISAU concludes that further investigation is warranted, it may report the matter to the appropriate MassDOT or MBTA division for further inquiry and possible corrective action.

Further, the ISAU uses data analysis and its own observations of MassDOT and MBTA practices to identify additional areas within MassDOT and MBTA to review.

¹⁵ The DBE program is a USDOT program for federally funded transportation projects. The Commonwealth, through the Supplier Diversity Office, has a similar program for projects using only state funding. Businesses can apply for state-issued certifications, including for minority-, woman-, veterans- and Portuguese-owned business certifications. MassDOT has WBE participation goals that prime contractors must meet on state-funded projects, similar to DBE goals on federally funded projects.

¹⁶ 49 C.F.R. § 26.67(b)(1)(ii)(A).

The ISAU reported several complaints to MassDOT, the MBTA, and other state and federal agencies in 2022. ISAU staff also worked collaboratively with MassDOT and the MBTA to resolve many issues and inquiries on topics as diverse as:

1. Outside employment: The ISAU identified two MBTA employees who held second jobs that may have violated the MBTA's policy regarding outside employment. The MBTA has a policy outlining its rules and requirements for secondary or outside employment and promoting compliance with the requirements of the Commonwealth's conflict of interest laws (Chapter 268A of the Massachusetts General Laws). At the time the ISAU became aware of the two employees' outside employment, the policy provided that such employment could not occur during the employee's MBTA work hours, nor could it conflict with the employee's MBTA job responsibilities. The ISAU reviewed the circumstances of the outside employment and ultimately reported the matters for further action.
2. Highway equipment misuse: After reviewing allegations that MassDOT highway employees inappropriately used the department's equipment for personal purposes, the ISAU reported the complaint to MassDOT's Highway Division. The Highway Division took steps to review, and then to stop, the conduct.
3. Vehicle inspections: The ISAU fielded multiple complaints regarding motor vehicle inspections, including allegations that inspectors gave inspection stickers to vehicles that had failed inspection. The ISAU referred the matters to the RMV.
4. Women-owned Business Enterprises (WBE): The ISAU received a complaint asserting that the owners of eight land surveying companies that work on MBTA projects are ineligible for their WBE certifications. Following a preliminary review, the ISAU reported the matter to the Supplier Diversity Office within the Operational Services Division.

IV. Investigations Referred to the Office of the Inspector General and Attorney General's Office

In accordance with Section 9(d) of Chapter 6C of the Massachusetts General Laws, the ISAU may report findings to the investigative division of the Office, and the results of such investigations may be referred to the Attorney General for appropriate action. Consistent with this authority, the ISAU in 2022 continued to work collaboratively with the Office's other divisions and the Attorney General's Office on a number of matters.

OTHER ACTIVITIES

I. Fraud Prevention Training

In furtherance of its mission to prevent the misuse of transportation funds, the ISAU developed and delivered fraud prevention training in 2022. Last March, the ISAU provided fraud prevention training for the MassDOT Highway Division's Construction Management Certification Program. The training highlighted common fraud schemes, prevention techniques and red flags for vendor fraud. The training also included a case study on bridge maintenance contracts, with a focus on evaluating contract terms, vendor submittals and invoices.

II. Hotlines

As stated above, the ISAU maintains a hotline for members of the public to confidentially report suspected fraud, waste or abuse in the expenditure of transportation funds. Information on how individuals may submit information via [email](#), telephone, mail or online [form](#) is available on the Office's [website](#). The ISAU also maintains employee hotlines on MassDOT's intranet where the organization's employees can report wrongdoing or suspected misuse of MassDOT funds.

The ISAU received 303 hotline complaints in 2022, with slightly more than 40% related to disability parking or placards. Specifically, the ISAU fielded 82 reports of alleged placard abuse and 43 general inquiries pertaining to disability parking or placards. The remaining complaints related to topics such as employee misconduct, time fraud, vendor fraud and MBTA safety concerns.

The ISAU evaluated each complaint to determine whether it fell within its jurisdiction and whether it merited action. Some complaints led to extensive investigations, some were referred to other agencies, and others were closed if a preliminary inquiry failed to substantiate the allegations. The ISAU classified each of the complaints into one of six categories:

1. New case: The ISAU opened a new investigation based on the complaint received.
2. Linked to an open case: The ISAU received a complaint about a matter already under investigation.
3. Complainant referral: The ISAU determined that the matter was outside of its jurisdiction, but provided the complainant with the appropriate source for handling their complaint. For example, when an individual calls with questions related to renewing their driver's license, the ISAU provides the contact information for the RMV's customer service center.
4. OIG referral: The ISAU preliminarily reviewed the complaint, determined that it warranted further review and referred it to the appropriate agency, usually MassDOT or the MBTA. The ISAU's hotline also serves as the state's disability parking placard abuse

hotline and receives complaints regarding suspected placard abuse. The ISAU refers those issues to the RMV's Medical Affairs Bureau for disposition.

5. No action: For some complaints, the ISAU was unable to pursue an investigation, refer the matter to the appropriate agency or provide the complainant with an appropriate contact for their complaint. Most often this occurs because the complainant did not provide their contact information or return a call when the ISAU needed more information. Sometimes the complainant had already contacted the appropriate agency.
6. Internal reassignment: Occasionally the ISAU receives a complaint that is more appropriate for another division within the Office. For example, the ISAU would not handle a complaint related to healthcare issues. In these instances, the ISAU internally reassigns the complaint to the appropriate division.

Figure 1 details the sources of hotline complaints for each month in 2022.

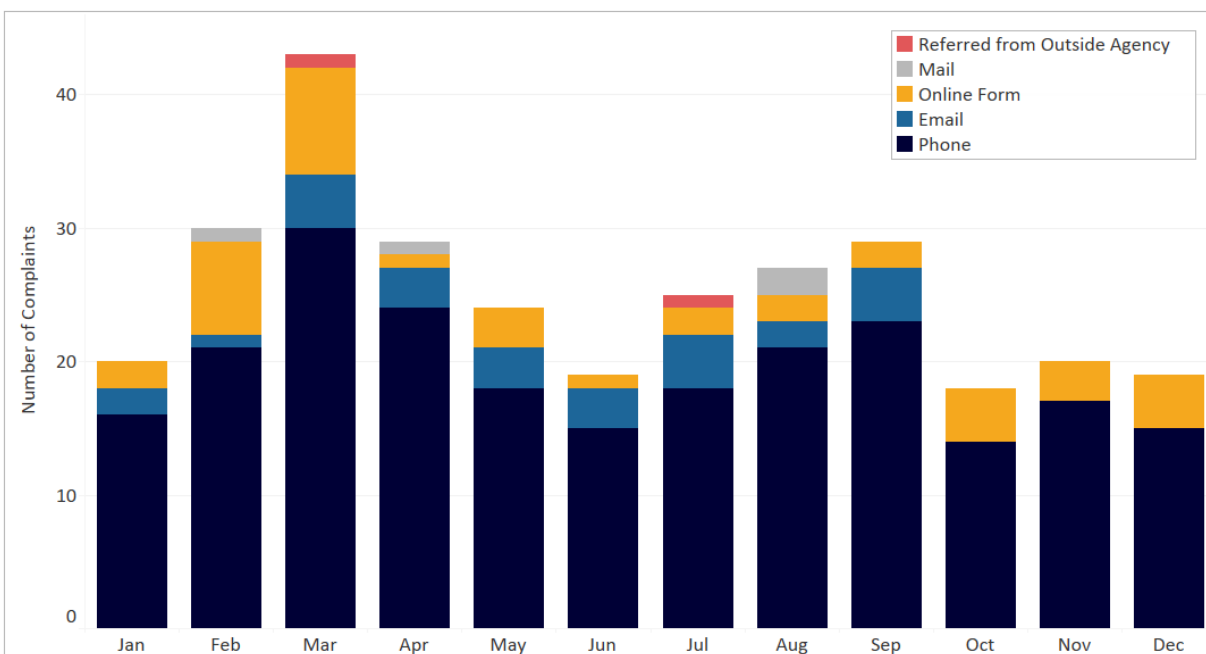


Figure 1. Intake Source by Month.

ACKNOWLEDGMENT

The Office appreciates the collaborative efforts of MassDOT and the MBTA over the past year as the ISAU worked to monitor the quality, efficiency and integrity of the transportation agencies' operating and capital programs. Their respective leadership teams and administrative staff were accessible and provided the ISAU with documents, information and responses to questions in a timely manner. While MassDOT, the MBTA and the Office have different statutory roles and missions, the agencies share the goal of responsibly spending tax dollars and have developed a professional working relationship since the ISAU's creation a decade ago. The Office hopes that this cooperative approach will continue to have a positive impact on MassDOT, the MBTA and the traveling public.

APPENDIX I: MBTA PRIVATIZATION CONTRACTS

Service Provided	Vendor	Original Term	Current end date (with renewals and extensions)	Description of services
Absence Management Services	UPMC Workpartners	5/13/16-5/12/19	Concluded 4/30/22	Manage employee absences and leaves, including employee call center
Police Dispatch	IXP Corporation	9/25/17-9/24/20	Concluded 9/24/22	Operate MBTA's transit police dispatch center
In-Station Customer Service	Mydatt Services, Inc., d/b/a Block by Block	7/31/17-7/30/18	Concluded 9/30/22	Provide and manage "transit ambassadors" throughout the MBTA's rail system to assist passengers at MBTA stations
Cash Collection and Processing	Brink's, Inc.	10/26/16-10/25/18	10/25/23	Administer cash collection activities to support revenue management; collect, count, transport and deposit money received at MBTA stations
Warehouse and Logistics	Mancon, LLC	2/1/17-1/31/22	1/31/24	Manage the MBTA's central warehousing functions, including storing, controlling and maintaining inventory; track and deliver bus and rail parts to MBTA facilities
Customer Service Call Center	Exela Technologies	6/1/18-5/31/21	5/31/24	Operate the customer service call center for MBTA riders
Automated Fare Collection	Cubic – John Laing	3/20/18-3/19/31	3/19/31	Design, deliver and implement a new automated fare collections system